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IN THE

Supreme Court of the United States

October Term, 1959.

No. 873.

JAMES A. GAINEY and J. L. YOUNG, Individually and on Behalf of Others Similarly Affected,

Petitioners,

v.

THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

and

THE PENNSYLVANIA RAILROAD COMPANY,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI AND APPENDIX OF RESPONDENT, THE PENNSYLVANIA RAILROAD COMPANY.

ROBERT M. LANDIS,
OWEN B. RHOADS,
1600 Three Penn Center Plaza,
Philadelphia 2, Pennsylvania,

RICHARD N. CLATTENBURG,
1138 Six Penn Center Plaza,
Philadelphia 2, Pennsylvania,

Counsel for Respondent, The Pennsylvania Railroad Company.

BARNES, DECHERT, PRICE, MYERS & RHOADS,
Of Counsel.

International, 711 So. 50th St., Phila. 43, Pa.

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IN THE

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OCTOBER TERM, 1959.

No. 873.

JAMES A. GAINEY AND J. L. YOUNG, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY AFFECTED,
Petitioners,

v.

THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

AND

THE PENNSYLVANIA RAILROAD COMPANY,
Respondents.

BRIEF OF RESPONDENT, THE PENNSYLVANIA RAILROAD COMPANY, IN OPPOSITION TO PETITION FOR CERTIORARI.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Third Circuit is reported at 275 F. 2d 342 (1960). The opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 177 F. Supp. 421 (1959).

JURISDICTION.

The jurisdiction of this court is invoked under 28 U. S. C. § 1254(1) upon a petition for writ of certiorari to the United States Court of Appeals for the Third Circuit.

STATEMENT OF THE CASE.

This action under the Railway Labor Act, 45 U. S. C. § 151 *et seq.* was brought by petitioners in the United States District Court for the Eastern District of Pennsylvania on behalf of themselves and some six hundred other "tallymen" against their collective bargaining representative, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and their employer, The Pennsylvania Railroad Company. The complaint sought damages against the Railroad for alleged loss of earnings since August 1, 1951 and a mandatory injunction compelling the Railroad to equalize the wages paid to tallymen employed in its Eastern Region with those paid to tallymen in the Central Region. Petitioners demanded an equal sum from the Brotherhood as punitive damages.

Summarizing the material averments of the complaint, petitioners alleged the following facts: They and other tallymen have been employed by the Railroad since August 1, 1950 under a collective bargaining agreement between the Brotherhood and the Railroad which was entered into on May 1, 1942 (Paragraph VI, p. 45).[1] Prior to and since August 1, 1950 tallymen were paid at different rates of pay for the same work, so that hourly rated tallymen in the Eastern Region of the Railroad received $24.09 less wages per month than the salaried tallymen employed in the Central Region (Paragraph VII; pp. 45-46).

This geographical differential in rates became the subject of a dispute between petitioners and the Railroad, and the General Chairman of the Brotherhood "proceeded to negotiate a settlement of the dispute" (Paragraph VIII, p. 46). "On August 1, 1951, an agreement was consummated" with the Railroad by the Brotherhood General

1. The paragraphs referred to are contained in the original complaint. All page references, unless otherwise noted, are to the pages of petitioners' appendix to petition for a writ of certiorari.

Chairman on behalf of petitioners, and this "understanding" was "reduced to writing" and attached to the complaint as Exhibit A (Paragraph VIII, p. 46). Exhibit A of the complaint is a letter from the Brotherhood General Chairman to the Railroad in which he reviewed certain bargaining proposals pertaining to the elimination of tonnage rates and equalization of pay rates for tallymen in the Eastern Region with those in the Central Region, and "suggest[ed]" that the proposals be made effective as of May 1, 1950. The letter concluded with the statement, "Will you please advise if you concur" (Exhibit A, p. 53).

The complaint then charged that the pay rates were never equalized, although tonnage payments to the Eastern Region tallymen were eliminated (Paragraph IX, p. 47, p. 54), and it further alleged that the Brotherhood has never taken any steps to compel the Railroad to abide by the so-called "agreement" because the Railroad "could control union officers at will." (Paragraph XIII, p. 48).[2]

Both defendants filed motions to dismiss the complaint.[3] The Railroad's motion averred among other things that the District Court had no jurisdiction over the subject matter of the action because the National Railroad Adjustment Board has exclusive jurisdiction under the Railway Labor Act to interpret agreements pertaining to wages; that the complaint failed to state a claim upon which relief could be granted because the alleged agreement was not a legally effective contract; that petitioners had failed to invoke and exhaust their administrative remedies under the collective bargaining agreements and the Railway Labor Act; and that the claims were barred by laches and by the applicable

2. Petitioners' statement of the case misstates the material allegations of the complaint (Petition, pp. 3-4). Judge Goodrich's opinion for the court below fairly and accurately summarizes these allegations (Petitioners' Appendix, pp. 32-38).

3. The grounds of the Brotherhood's motion to dismiss are not material to the issues between petitioners and the Railroad and are therefore not specified.

statutory and contractual limitations upon the filing of claims and suits of this kind (Appendix to Railroad's Brief in Opposition to Petition, pp. 1a-15a).

The District Court granted both defendants' motions and dismissed the complaint. As to the complaint against the Railroad it held that the Railroad Adjustment Board had exclusive jurisdiction to interpret agreements pertaining to wages; that the so-called "agreement," attached as Exhibit A to the complaint, was not a contract at all, but at best an offer to enter into a contract; and that the plaintiffs had failed to show exhaustion of their administrative remedies under the collective bargaining agreements and the Railway Labor Act (Petitioners' Appendix, pp. 22-28, p. 32).

In addition to these dispositive grounds, the District Court noted that there were other "formidable" defenses to the complaint set forth in the defendants' motions, such as the defenses of laches, statute of limitations, and the limitation provisions of the collective bargaining agreements, not to mention the dubious propriety of the spurious class action averred in the complaint (Petitioners' Appendix, pp. 20-21).

The Court of Appeals (Judges Goodrich, McLaughlin and Kalodner) affirmed the judgment of the District Court in an opinion by Judge Goodrich. The court held that the complaint as to the Railroad Company had to be dismissed because the National Railroad Adjustment Board has exclusive jurisdiction of disputes between railroad employees and their employer concerning the interpretation of agreements concerning rates of pay, and that the so-called "agreement" on which the complaint was based was not an enforceable contract under general principles of contract law or the applicable decisions of the courts of Pennsylvania, the state in which the letter constituting the alleged agreement was composed, mailed and received (Petitioners' Appendix, pp. 33-38). The court also noted without elaboration "all the other bases of defense brought before both

the district court and this Court" (Petitioners' Appendix, p. 38).[4]

After the court below denied their petition for a rehearing, petitioners filed this petition for certiorari.

REASONS FOR DENYING THE WRIT.

This is a simple case involving well established precedents under the Railway Labor Act and general principles of contract law. Nothing about it would justify review by this court on writ of certiorari (Rule 19, Revised Rules of the Supreme Court of the United States).

As recently as last year this court in *Pennsylvania R.R. v. Day*, 360 U. S. 548 (1959), and *Union Pacific R.R. v. Price*, 360 U. S. 601 (1959), reaffirmed the principle laid down in *Slocum v. Delaware, L. & W. R. R.*, 339 U. S. 239 (1950), and *Order of Railway Conductors v. Southern R. R.*, 339 U. S. 255 (1950), that the National Railroad Adjustment Board has exclusive primary jurisdiction of disputes between employees and carriers concerning the interpretation of provisions of collective bargaining agreements in the railroad industry. Bound by these precedents, the court below accepted the averments of the complaint at face value, and held that the District Court had no jurisdiction over the subject matter of the suit.[5]

The complaint was based upon an allegation that the Railroad and the Brotherhood had entered into an "agreement" providing for equalization of pay rates for tallymen in the Eastern Region with those paid to tallymen in

4. Since the basis for affirming the judgment in favor of the Brotherhood does not concern the Railroad, no reference need be made to it here.

5. As Judge Goodrich observed in the opinion of the court below, quoting from petitioners' own brief, "The plaintiffs, themselves, acknowledge that 'disputes between carriers and their employees as to interpretation of existing agreements must be referred to the National Railroad Adjustment Board'." (Petitioners' Appendix, p. 34).

the Central Region of the Railroad. Paragraph VIII of the complaint, which is the crux of petitioners' suit, averred that "on August 1, 1951, an agreement was consummated" between the Railroad and the Brotherhood providing for such equalization of rates (p. 46). Exhibit A attached to the complaint purported to set forth the terms of the "agreement" (pp. 52-53), and petitioners repeatedly invoked this agreement elsewhere in their complaint (Paragraphs IX, XIII, XIV, XVI, pp. 47, 48, 49), describing it as a "consummated" agreement (Paragraphs X, XVIII, pp. 47, 49). Their claim for damages against the Railroad was for the losses in wages which they attributed to the Railroad's failure to abide by this agreement since the time it was allegedly made almost ten years ago (Paragraph XX, p. 50).

Construing these averments of the complaint in light of the provisions of Section 3, First (i) of the Railway Labor Act, 45 U. S. C. § 153, First (i), which provides that disputes "between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions" shall be referred to the National Railroad Adjustment Board, the court below held that this section of the Act was "a seemingly insurmountable defense of the Railroad to this suit" (Petitioners' Appendix, p. 33). Under the decisions of this court, the Court of Appeals was bound to reach this conclusion. Its judgment certainly does not warrant review of this principle, which has so recently been reexamined by this court.

Quite apart from this "insurmountable" jurisdictional barrier, the complaint failed to state a cause of action because the so-called "agreement" on which it was based was not a legally enforceable contract. Exhibit A, attached to the complaint, was a letter of the Brotherhood General Chairman to the Railroad General Manager, dated April 21, 1950, which was the purported "contract". The court be-

low quoted the letter in its entirety in its opinion, and concluded that it was not a contract, but "simply an invitation for further comment from the Railroad official to whom it is addressed" (Petitioners' Appendix, p. 36). It based this conclusion on general principles of contract law, *Restatement, Contracts*, §§ 2, 19, 20, 22, 24, 60 (1932), and the applicable decisions of the courts of Pennsylvania, the state in which the letter was composed, mailed, and received. *Cohn v. Penn Beverage Co.*, 313 Pa. 349, 169 Atl. 768 (1934); *Selig v. Philadelphia Title Ins. Co.*, 380 Pa. 264, 111 A. 2d 147 (1955); *United Mercantile Agencies, Inc. v. Slotsky*, 121 Pa. Super. 1, 182 Atl. 788 (1936); *Alexanian v. Fidelity-Philadelphia Trust Co.*, 152 Pa. Super. 23, 30 A. 2d 651 (1943).

Even if the decision of the court below had not been as firmly grounded in these well established principles of contract law as it was, an elementary question of state contract law does not merit the attention of this court under its certiorari power. *Ruhlin v. N. Y. Life Ins. Co.*, 304 U. S. 202, 206 (1938), cert. denied, 309 U. S. 655 (1940); Rule 19 (b), Revised Rules of the Supreme Court of the United States.

Disregarding the real basis of their suit against the Railroad, as one which arises out of an agreement between the Railroad and the Brotherhood pertaining to wages of tallymen in the Railroad's Eastern Region, petitioners pretend to find a conflict between the decision of the court below with decisions in the Sixth and Seventh Circuits (Petition, pp. 5-6). Far from conflicting with the decision in the instant case, those cases do not remotely concern the issues raised here.

Hunter v. Atchison T. & S. F. Ry., 171 F. 2d 594 (7th Cir. 1948), cert. denied, 337 U. S. 916 (1949), was a suit to enjoin enforcement of an Adjustment Board award because of lack of notice to certain affected employees. The Court of Appeals for the Seventh Circuit held that because there was no such notice to the employees against whom the award

was to be enforced, an injunction against its enforcement should be affirmed.[6] Nothing that was said, let alone held, in the *Hunter* case in any way conflicts with the decision below.

Thomas v. New York, Chi. & St. L. R. R., 185 F. 2d 614 (6th Cir. 1950), was an action by a railroad employee to enforce an Adjustment Board award reinstating him after a wrongful discharge. Such an action under the Railway Labor Act is *de novo*, and because the employee had failed to prove in the trial court that he was wrongfully discharged and failed to prove the terms of the contract of employment which he claimed were violated, the dismissal of his suit was affirmed on appeal. That case has nothing to do with the power of the Adjustment Board to interpret "agreements concerning rates of pay" of the kind alleged in the complaint in this case.

Petitioners also condemn the court below because they say "it utterly failed to distinguish 'major' and 'minor' disputes in the railroad industry" (Petition, p. 7), as if such a distinction would have been germane to the decision in this case. Since petitioners' own complaint was based upon an allegation of a "consummated agreement" pertaining to wages that should be paid to tallymen in the Railroad's Eastern Region, it was obviously not a dispute which had to do with the "bargaining process for a new contract" or the "formation of collective agreements." See *Trainmen v. Chicago R. & I. R. R.*, 353 U. S. 30, 33 (1957); *Elgin J. & E. Ry. v. Burley*, 325 U. S. 711, 723 (1945), aff'd, 327 U. S. 661 (1946). Here, the complaint so plainly asserted a dispute over an allegedly existing agreement concerning tallymen's wages, that it obviously fell within the jurisdiction of

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6. The court said (p. 597):

"The only issue below, as well as here, is whether the Order of the Board is void for failure to give plaintiffs notice of the proceeding, as alleged in their complaint and as found by the court."

the Railroad Adjustment Board, and there was no need for the court below to belabor the distinction between "major" and "minor" disputes, which has been so clearly defined in the decisions of this court.

Finally, petitioners assert as a reason for granting certiorari that the Adjustment Board cannot afford them "complete relief" against the carrier and the Brotherhood (Petition, p. 9). This contention again disregards the basis of their claim against the Railroad, which rests upon its alleged failure to abide by the "agreement" on tallymen's wages. If there *were* such an agreement, its interpretation would be for the Adjustment Board, which could award whatever compensation might be due to petitioners under its provisions. But if, as the court below found, the "agreement" attached as Exhibit A to the complaint was not a legally enforceable contract, neither the Board nor the courts could afford petitioners relief by making a contract for them where one did not exist before.

The decision in this case is firmly grounded on the precedents laid down by this court and general principles of contract law. It presents no novel or important questions with which this court should concern itself on review under its certiorari powers.[7]

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7. The reasons for granting certiorari discussed on pages 10 and 11 of the petition concern only the petitioners' complaint against the Brotherhood and require no comment by the Railroad, since the judgment in favor of the Railroad rests upon other "insurmountable" defenses (Petitioners' Appendix, pp. 33-36).

CONCLUSION.

For the foregoing reasons the petition for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

ROBERT M. LANDIS,
OWEN B. RHOADS,
RICHARD N. CLATTENBURG,
Counsel for Respondent,
The Pennsylvania Railroad Company.

BARNES, DECHERT, PRICE,
MYERS & RHOADS,
Of Counsel.

May, 1960.

APPENDIX TO BRIEF FOR RESPONDENT, THE PENNSYLVANIA RAILROAD COMPANY.

MOTION OF DEFENDANT, THE PENNSYLVANIA RAILROAD COMPANY, TO DISMISS THE COMPLAINT.

The Pennsylvania Railroad Company, one of the defendants in this case, moves to dismiss the complaint for the following reasons:

1. This Court has no jurisdiction over the subject matter of this action in that:

(a) The complaint appears to be based upon an alleged agreement pertaining to wages of tallymen represented by defendant brotherhood and employed by defendant railroad, the interpretation or application of which is subject to the exclusive jurisdiction of the National Railroad Adjustment Board, as provided in the Railway Labor Act, 45 U. S. C. 151 et seq.

(b) The collective bargaining agreements between defendant railroad and defendant brotherhood [the relevant excerpts of which are set forth in the attached supporting affidavit], together with the provisions of the Railway Labor Act, have established an integrated hearing and appeals procedure for claims for compensation of the kind involved in this case, and this procedure is the exclusive remedy for the redress of plaintiffs' claimed violation of their rights to compensation.

(c) Under the applicable law, plaintiffs have no recourse to this court's jurisdiction since they have failed to invoke and exhaust their available administrative remedies provided under their collective bargaining agreements and the Railway Labor Act.

(d) There is no diversity of citizenship between the parties.

(e) The complaint shows that the amount in controversy between each plaintiff and this defendant is substantially less than $10,000 exclusive of interest and costs.

2. The complaint fails to state a claim upon which relief can be granted against this defendant in that:

(a) The complaint and its Exhibit A show that the alleged agreement upon which the complaint is based was not a legally effective contract which is enforceable in this court.

(b) The plaintiffs' claims are barred by laches and by the applicable statutory and contractual limitations upon the filing of claims and suits of this kind.

(c) This is not a proper class action because these plaintiffs have no right to represent other employees, nor are they truly representative of any class of employees, for the prosecution of claims of the kind set forth in the complaint.

(d) Whatever rights these plaintiffs might have to enforce any duty of representation against defendant brotherhood, their own collective bargaining representative, cannot provide the basis for a suit against defendant railroad because of any alleged failure of defendant brotherhood to represent them fairly and without discrimination.

(e) Plaintiffs are not legal third-party beneficiaries of any alleged rights arising under the so-called "agreement" referred to in the complaint.

OWEN B. RHOADS,
ROBERT M. LANDIS,
RICHARD N. CLATTENBURG,
Attorneys for Defendant,
The Pennsylvania Railroad Company.

BARNES, DECHERT, PRICE, MYERS & RHOADS,
Of Counsel.

May 15, 1959.

Affidavit in Support of Motion to Dismiss Complaint.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

CHARLES E. ALEXANDER, being duly sworn according to law, deposes and says:

I am Assistant Director of Labor Relations of The Pennsylvania Railroad Company, one of the defendants in this case, and I am authorized to make this affidavit on its behalf. As Assistant Director of Labor Relations I have under my jurisdiction the conduct and supervision of collective bargaining negotiations with the numerous unions representing employees of The Pennsylvania Railroad Company, including the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereafter referred to as the "Brotherhood of Clerks"). I am personally familiar with the provisions of the various collective bargaining agreements between the railroad company and the Brotherhood of Clerks.

The Agreement of May 1, 1942 between the railroad company and the Brotherhood of Clerks, which is referred to in Paragraph VI of the complaint in this case, contains a regular grievance procedure for the processing of claims for compensation of the kind alleged in the complaint. This procedure is set forth in Rule 7-B-1. Exhibit 1 attached to this affidavit is a true and correct copy of this portion of the collective bargaining agreement of May 1, 1942.

Effective July 1, 1945, the railroad company and the Brotherhood of Clerks entered into a further collective bargaining agreement for the processing of grievances of this kind, providing an additional procedure for appeals from the superintendent, as a supplement to Rule 7 of the Agreement of May 1, 1942. Exhibit 2 attached to this affidavit is a true and correct copy of this agreement.

Effective January 1, 1955, the railroad company and the Brotherhood of Clerks entered into a collective bar-

gaining agreement known as the National Time Limit Rule for the presentation and handling of claims or grievances. Exhibit 3 attached to this affidavit is a true and correct copy of this agreement.

Effective November 1, 1955, the railroad company and the Brotherhood of Clerks entered into an agreement revising Rule 7-B-1 and superseding the provisions of the National Time Limit Rule. Exhibit 4 attached to this affidavit is a true and correct copy of the Agreement of November 1, 1955.

The aforesaid agreements were in effect during the period covered by the allegations in the complaint.

The facts set forth in this affidavit are personally known by me to be true and correct.

/s/ CHARLES E. ALEXANDER,
Charles E. Alexander.

Sworn to and subscribed before me this 14th day of May, 1959.

/s/ W. STEWART BLACKBURN,
Notary Public.

(Seal)

My commission expires July 15, 1962.

Exhibit 1.

EXCERPT FROM AGREEMENT OF MAY 1, 1942.

7-B-1 (a) Claims for compensation alleged to be due, may be made only by an employe or by the "duly accredited representative" as that term is defined in this Agreement, on his behalf, and must be presented, in writing, to the employe's immediate Supervisor within ninety days from the date the employe received his pay check for the pay period involved, except:

1. Time off duty on account of sickness, leave of absence, suspension or reduction in force, will extend the time limit specified in paragraph (a) of this rule (7-B-1) by the period of such time off duty.

2. When a claim for compensation alleged to be due is based on an occurrence during a period employe was out of active service due to sickness, leave of absence, suspension or reduction in force, it must be made, in writing, within ninety days from the date the employe resumes duty.

(b) If claims are not made within the time limit specified in the foregoing paragraph (a) of this rule (7-B-1) including Exceptions (a) and (2), they will not be entertained nor allowed.

(c) When claims for compensation alleged to be due have been presented in accordance with the foregoing paragraph (a) of this rule (7-B-1) including Exceptions (1) and (2), and are not allowed, the employe will be notified to this effect, in writing, within thirty days from the date his claim was presented. When not so notified claims will be allowed.

(d) When time claims are allowed the interested employes and the Division Chairman will be advised in writ-

ing the amounts involved and the payrolls on which the payments will be made.

(e) A claim for compensation denied in accordance with the foregoing paragraph (c) of this rule (7-B-1) will be considered invalid unless it is listed for discussion by the Division Chairman with the Superintendent (in Regional and System General Office Departments and at Altoona Works, the officer in charge of the Department) within ninety days after the date on which the claim was initially denied.

Exhibit 2.

This Agreement is entered into this First day of July 1945, by and between The Pennsylvania Railroad Company and employes of said Company of the classifications designated as Clerical, Other Office, Station and Storehouse Employes, as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, for the purpose of setting forth the usual manner of handling disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, up to and including the chief operating officer designed to handle such disputes.

It is agreed:

1. This Agreement shall supersede all prior agreements with regard to the usual manner of handling disputes growing out of grievances, or out of the interpretation or application of agreements concerning rules, rates of pay and working conditions.

2. The steps in the said usual manner of handling such disputes will be, successively, with:

(a) Superintendent

(b) General Superintendent

(c) General Manager

(d) General Managers (Joint)

Note: In the System General Office "Division Superintendent", "General Superintendent" and "General Manager" as used in this agreement applies to positions designated as comparable for purposes of orderly handling of disputes.

At Altoona Works "Division Superintendent" as used in this Agreement means Master Mechanic, General Foreman or corresponding officer in the unit of Altoona Works where the question arose; "General Manager" means Works Manager.

In Regional Offices, under the jurisdiction of the General Managers, "Division Superintendent" as used in this agreement means Officer in charge of each Department.

3. Each Superintendent will meet monthly with the Division Chairman, and each General Superintendent and General Manager will meet monthly with the General Chairman, for the purpose of disposing, if possible, of matters coming within the purview of the foregoing and which have been listed, at least ten (10) days in advance, for discussion at such meeting by either party. These meetings will be held on dates scheduled in advance. Decisions of Superintendent, General Superintendent and General Manager shall be rendered, in writing, within forty-five (45) days from meeting at which matter was discussed.

4. Within forty-five (45) days from date requested a submission in the following form will be prepared by the Superintendent and Division Chairman, and by the General Superintendent and General Chairman, as the case may be, covering a controversial matter not disposed of with the Superintendent or General Superintendent respectively:

(a) Subject (which shall specifically set forth the nature of the controversy, and the rule or rules involved).

(b) Joint Statement of Agreed Upon Facts.

(c) Position of Employes.

(d) Position of Company.

5. In addition to "disputes growing out of grievances, or out of the interpretation or application of agreements

concerning rates of pay, rules or working conditions," other questions may be presented and handled in the manner prescribed above, at the monthly meetings.

6. For the purpose of further discussion and possible disposition of disputes growing out of grievances, or out of the interpretation or application of agreements concerning rules, rates of pay, and working conditions which have not been disposed of by handling in accordance with the procedure provided in this Agreement, the General Managers of the several Regions and the New York Zone (jointly) shall meet monthly with the General Chairman of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. The "General Managers" of other departments as described in "Note" under paragraph (2) of this Agreement will also attend these meetings when matters involving their departments are discussed.

7. Matters to be discussed at such meetings shall be listed at least twenty (20) days in advance by either party. These meetings will be held on dates scheduled in advance. Decisions of the General Managers shall be rendered, in writing, within forty-five (45) days from the meeting at which the matter is discussed.

8. This Agreement shall become effective this *1st* day of *July* 1945, and shall remain in full force and effect until changed or terminated as provided in the Railway Labor Act, as amended.

Exhibit 3.

ARTICLE V—CARRIERS' PROPOSAL NO. 7.

Establish a rule or amend existing rules so as to provide time limits for presenting and progressing claims or grievances

This proposal is disposed of by adoption of the following:

The following rule shall become effective January 1, 1955:

1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the conten-

tions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to.

2. With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule and if not thereafter handled pursuant to paragraphs

(b) and (c) of Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred.

3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

4. This rule recognizes the right of representatives of the Organizations, parties hereto, to file and prosecute claims and grievances for and on behalf of the employees they represent.

5. This agreement is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the Carrier.

6. This rule shall not apply to requests for leniency.

Exhibit 4.

7-B-1. (Effective November 1, 1955)

(a) Claims for compensation alleged to be due, may be made only by an employe or by the "duly accredited representative" as that term is defined in this Agreement, on his behalf, and must be presented, in writing, to the employe's immediate Supervisor within ninety days from the date the employe received his pay check for the pay period involved, except:

1. Time off duty on account of sickness, leave of absence, suspension or reduction in force, will extend the time limit specified in paragraph (a) of this rule (7-B-1) by the period of such time off duty.

2. When a claim for compensation alleged to be due is based on an occurrence during a period employe was out of active service due to sickness, leave of absence, suspension or reduction in force, it must be made, in writing, within ninety-days from the date the employe resumes duty.

(b) If claims are not made within the time limit specified in the foregoing paragraph (a) of this rule (7-B-1) including Exceptions (1) and (2), they will not be entertained nor allowed.

(c) When claims for compensation alleged to be due have been presented in accordance with the foregoing paragraph (a) of this rule (7-B-1) including Exceptions (1) and (2), and are not allowed, the employe or the duly accredited representative (when the claim is presented by such representative) will be notified to this effect, in writing, within thirty days from the date his claim was presented. When not so notified claims will be allowed.

(d) When time claims are allowed the interested employes and the Division Chairman will be advised in writing

the amounts involved and the payrolls on which the payments will be made. When time claims are allowed by the Manager of Labor Relations the General Chairman will also be advised in writing the amounts involved and the payrolls on which the payments will be made.

(e) A claim for compensation denied in accordance with the foregoing paragraph (e) of this rule (7-B-1) will be considered invalid unless it is listed for discussion by the Division Chairman with the Superintendent of Personnel (in System General Office Departments the appropriate officer designated) within ninety days after the date on which the claim was initially denied.

(f) Each Superintendent of Personnel will meet monthly with the Division Chairman for the purpose of disposing, if possible, of disputes growing out of grievances, or out of the interpretation or application of agreements concerning rules, rates of pay and working conditions, as well as discipline cases. In addition other questions may be presented and handled at monthly meetings.

These meetings will be held on dates scheduled in advance and the Division Chairman or the Superintendent of Personnel will list in writing to the other party at least ten days in advance subjects for discussion at such meetings. Decisions will be rendered in writing.

(g) When requested, a submission in the following form will be prepared by the Superintendent of Personnel and Division Chairman, covering a controversial matter not disposed of with the Superintendent of Personnel—six copies of each to be furnished to the Division Chairman by the Superintendent of Personnel:

(1) Subject, setting forth specifically the nature of controversy, and the rule or rules involved.

(2) Joint Statement of Agreed Upon Facts, which shall contain all the pertinent facts necessary for the determination of the issues by those who may be

unfamiliar with the situation. If, after a diligent effort, the parties are unable to agree upon a joint statement of facts the parties will state the facts to be separately set forth in the submission.

(3) Position of Employes.

(4) Position of Company.

(h) The Manager of Labor Relations will meet monthly with the General Chairman for the purpose of disposing of matters not settled with the Superintendents of Personnel. The meetings will be held on dates scheduled in advance and the General Chairman or the Manager of Labor Relations will list in writing to the other party at least ten days in advance subjects for discussion at such meetings. Decisions will be rendered in writing.

(i) All claims or grievances involved in a decision by the Manager of Labor Relations shall be barred unless within one year from the date of said officer's decision proceedings are instituted by the General Chairman before the Third Division of the National Railroad Adjustment Board.